

Docket Nos. 2017-370-E, 2017-207-E, and 2017-305-E

REPORT OF STIPULATIONS

A pre-hearing conference with regard to the above-noted Dockets was held on Thursday, October 4, 2018, at 2:00 P.M. Appearing in person and participating were K. Chad Burgess, Esquire, Matthew W. Gissendanner, Esquire, Mitchell Willoughby, Esquire, Robert Guild, Esquire, Robert E. Tyson, Esquire, Richard L. Whitt, Esquire, Frank R. Ellerbe, III, Esquire, Adam Protheroe, Esquire, Sue Berkowitz, Esquire, Emory Smith, Esquire, Jeff Nelson, Esquire, Steven W. Hamm, Esquire, Michael Anzelmo, Esquire, David Black, Esquire, Jeff Griffith, Esquire, William Hubbard, Esquire, Matthew Richardson, Esquire, James Cox, Esquire, Scott Elliott, Esquire, Frank Knapp, *pro se*, and Lynn Teague, *pro se*. Appearing and participating by telephone were Alexander G. Shissias, Esquire, Will Cleveland, Esquire, Blan Holman, Esquire, Elizabeth Jones, Esquire, Gudren Thompson, Esquire, James Horwood, Esquire, Belton T. Zeigler, Esquire, Emily W. Medlyn, Esquire, Lisa Booth, Esquire, Joseph Reid III, Esquire, and Stephanie U. (Roberts) Eaton, Esquire. Presiding were the Chairman, the Honorable Randy Randall, and the Hearing Officer, F. David Butler, Esquire. Also in attendance were Commissioner Elliott F. Elam, Jr., Chief Clerk and Administrator Jocelyn G. Boyd, General Counsel Joseph Melchers, other Commission Staff members, and members of the public. The pre-hearing conference was also livestreamed. Hearing Officer Butler announced that the Conference was being held under the provisions of 10 S.C. Code Ann. Regs. 103-839.

After taking appearances of the parties, Hearing Officer Butler turned the conference over to Chairman Randall, who delivered his remarks. Chairman Randall turned the matter back over to Hearing Officer Butler, who first discussed the seating chart that had been provided to counsel, and noted that it was to be used not only for the pre-hearing conference, but for the hearing beginning November 1 as well. It was stated that a final seating chart would be issued to govern the remaining seating in the Hearing Room for the hearing of the case. The Hearing Officer then described the various features of the building containing the Hearing Room. He noted that the hearing on the merits would be livestreamed.

Due to limited space in the Hearing Room, Hearing Officer Butler requested that the parties furnish the names of support staff for the various parties that would be present in the hearing room, so that the security officers would be sure to admit them to the proceedings upon arrival. A general e-mail address for this purpose, and for general procedural correspondence with the Commission was reported to have been established, which was [PSC\\_Hearings@psc.sc.gov](mailto:PSC_Hearings@psc.sc.gov). (An underscore appears between the "C" in "PSC" and the "H" in "Hearings.") This address will be accessed by the Hearing Officer and other members of the Commission Staff. However, it was noted that the parties to the case would have to be copied separately with their normal e-mail addresses with any messages.

Reference was made by Hearing Officer Butler to the General Assembly's provision of a limited time provision for the trial of the case, and the fact that the Commission had to issue an Order in this matter by December 21, 2018. The Hearing Officer reminded the parties of the broad authority given to the Commission to manage its hearings, and suggested a review of S.C. Code Ann. Section 58-3-225 and the Editor's Note accompanying that statute. The Hearing Officer asked for the parties' cooperation during the proceeding.

Hearing Officer Butler then outlined various procedural matters with regard to the hearing itself, some of which had been discussed in Order No. 2018-81-H:

1) Each party will get 5 minutes for an opening statement the first day. The Hearing Officer also reminded the parties that they can submit pre-hearing briefs.

2) For direct testimony, each witness should summarize their pre-filed testimony and the parties should provide copies of the summaries to the Commissioners and the parties. The summary must stay within the bounds of the pre-filed testimony. Each summary should be as brief as it can be made and still get the points in. The default expectation would be that the summaries would last no longer than 5 to 10 minutes.

6) With regard to cross-examination, collaboration of parties in order to eliminate duplication of questions is desirable. Ground rules for cross-examination were described:

a) Only one lawyer per party per cross of a witness. In fact, it would be helpful if only one lawyer crossed per witness. However, if other attorneys have questions that they do not feel were addressed, it would be best if a particular interest group designates one particular attorney to ask questions to avoid duplication.

b) Caution the witnesses to be responsive to the question, so the attorneys do not have to rephrase. Also, the witnesses should be cautioned to answer the question that was asked and not to expand their answers into comments about other aspects of their testimony, or give answers to questions that have not yet been asked. It would be appropriate if the parties wanted to help the Commission enforce these rules by objecting if any deviation from these principles is seen.

c) Eliminate duplicative questions. If duplication goes on, the Chairman will caution an attorney without an objection from the parties.

d) Also with regard to cross, as the cross lengthens, the Chairman will be watching even more carefully for duplicative questioning.

7) With regard to agreement on the admissibility of pre-filed exhibits, Hearing Officer Butler discussed the provisions of Order No. 2018-137-H.

Robert Guild, Esquire, representing Friends of the Earth, Sierra Club, then presented a discussion and argument on the matter of witness scheduling and order of presentation of the witnesses in the consolidated dockets. Reply comments were presented by Mitchell Willoughby, Esquire, on behalf of South Carolina Electric & Gas Company ("SCE&G"), Matthew Richardson, Esquire, on behalf of the South Carolina Regulatory Staff, Emory Smith, Esquire, on behalf of the South Carolina Attorney General, and other counsel and *pro se* litigants. No ruling on the issue was made by the Chairman or hearing officer on the matter, which was taken under advisement.

Scott Elliott, Esquire, representing the South Carolina Energy Users Committee, raised the question of all parties stipulating into the record all Commission Orders related to the Base Load Review Act. Mitchell Willoughby, Esquire suggested adding in any Supreme Court Orders that resulted from appeals

of such Commission Orders. Attorney Elliott did not object. No other objections were heard to the proposal. It was noted that the possible Stipulation into the record of other documents was available under the provisions of Order No. 2018-81-H.

With regard to stipulation of admissibility of documents, Robert Guild, Esquire, noted that, under the Hearing Officer's ruling, the parties were to list any objections to the admissibility of pre-filed hearing exhibits in pre-hearing briefs. Mr. Guild inquired whether there would be a mechanism for parties to respond to these objections. Hearing Officer Butler stated that such a mechanism would be provided.

Mitchell Willoughby, Esquire raised a question as to the meaning of a phrase appearing in Order No. 2018-130-H in the section entitled "Deadline for Submission of List of Non-Prefiled Witnesses." The phrase in question appears in the following sentence: "It has come to the Commission's attention that the parties may desire at the merits hearing to request the admission of deposition evidence into the record or may wish to otherwise present witnesses whose testimony has not been pre-filed under Commission regulations, but which otherwise may be admissible into the record of this case through other legal means." (emphasis added) The Hearing Officer noted that, in the past, the Commission has allowed the testimony of witnesses who have been subpoenaed into the record without the testimony of said witnesses having been pre-filed. Various parties commented on this topic and possible interplay, or lack thereof with the requirements for the admission of depositions into the record, including, but not limited to Frank R. Ellerbe, III, Esquire.

Order No. 2018-130-H requires that the parties furnish a list of either depositions that will be proffered for admission into evidence or of non-pre-filed witnesses by October 15, 2018. Mitchell Willoughby raised the question as to whether this limited the proffer of non-pre-filed witnesses after the October 15, 2018 deadline. Robert Guild, Esquire inquired as to whether "good cause" might be shown for the admission of such witness testimony after this deadline in situations such as the need for a reply witness. The Hearing Officer replied that the Commission always reserved the right to consider whether the "good cause"

standard had been met in deciding whether to grant an exception to a previous stated deadline.

Will Cleveland, Esquire, inquired as to the possibility of setting “days certain” for various witnesses for the hearing, or whether all witnesses would be required to be present for the entire proceeding, or at least until they testify. The Hearing Officer noted that the Commission has always considered “days certain” for witnesses, and parties have always been cooperative about taking such witnesses out of order, if need be. However, this is a case-by-case matter. The parties can certainly make such requests, and the Commission will try to accommodate them, if possible.

There being no further business to come before the pre-hearing conference, the Chairman adjourned it.